

**FILED**

FEB 20 2001

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_  
DEPUTY CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

CALIFORNIA INDEPENDENT SYSTEM  
OPERATOR CORPORATION,

Plaintiff,

v.

RELIANT ENERGY SERVICES, INC., et  
al.,

Defendants.

No. Civ. S-01-0238 FCD (JFM)


**[PROPOSED] INTERIM PROTECTIVE  
ORDER REGARDING  
CONFIDENTIAL INFORMATION**

Pursuant to Federal Rule of Civil Procedure 26(c)(7), the parties request that the Court enter the attached interim protective order. Because of the shortened time frame due to the preliminary injunction hearing, the parties are conducting expedited discovery. We request that the attached protective order be entered on an interim basis, in order to accommodate this expedited discovery. However, the parties expressly reserve the right to seek modification of this interim protective order by the Court at a future time.

*Calif. Ind. System Operator Corp. v. Reliant Energy Servs., Inc., et al.*, No. Civ. S-01-0238 FCD (JFM)  
INTERIM PROTECTIVE ORDER REGARDING CONFIDENTIAL INFORMATION

1 DATED: February 14, 2001.

2 McCUTCHEN, DOYLE, BROWN & ENERSEN, LLP

3  
4 By:   
5 Terry J. Houlihan  
6 Attorneys for the Reliant Defendants

7 DATED: February 14, 2001.

8  
9 FARELLA BRAUN & MARTEL, LLP

10  
11 By: \_\_\_\_\_  
12 Norma G. Formanek  
13 Attorneys for Plaintiff California  
Independent System Operator Corporation

14 DATED: February 14, 2001.

15  
16 PILLSBURY WINTHROP LLP

17  
18 By: \_\_\_\_\_  
19 Michael J. Kass  
20 Attorneys for Defendant  
21 Dynegy Power Corp.

1 DATED: February 14, 2001.

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6 Terry J. Houlihan  
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9 FARELLA BRAUN & MARTEL, LLP

10  
11 By: C. Bronson Wittig  
12 ~~Norma G. Furmanek~~ C. Bronson Wittig  
13 Attorneys for Plaintiff California  
Independent System Operator Corporation

14 DATED: February 14, 2001.

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18 By: \_\_\_\_\_  
19 Michael J. Kass  
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21 Dynegy Power Corp.

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McCUTCHEN, DOYLE, BROWN & ENERSEN, LLP

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By: \_\_\_\_\_

Terry J. Houlihan

Attorneys for the Reliant Defendants

6

7

DATED: February 14, 2001.

8

9

FARELLA BRAUN & MARTEL, LLP

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By: \_\_\_\_\_

Norma G. Formanek

Attorneys for Plaintiff California

Independent System Operator Corporation

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DATED: February 14, 2001.

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PILLSBURY WINTHROP LLP

17

18

By: \_\_\_\_\_

*Michael J. Kass*

Michael J. Kass

Attorneys for Defendant

Dynegy Power Corp.

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1 DATED: February 14, 2001.

2

THE WILLIAMS COMPANIES, INC.

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4

5

By: Alex A. Goldberg / SSA

6

Alex A. Goldberg

7

Senior Regulatory Counsel

Attorneys for Defendant Williams Energy

8

DATED: February 14, 2001.

9

OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF CALIFORNIA

10

11

12

By: \_\_\_\_\_

13

Hiren Patel

14

Deputy Attorney General

15

Attorneys for Intervenor People of the State of  
California ex rel. Electricity Oversight Board

16

DATED: February 14, 2001.

WILLIAMS & CONNOLLY, LLP

17

18

19

By: \_\_\_\_\_

20

Steve Raber

Attorneys for the AES Defendants

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22 SO ORDERED.

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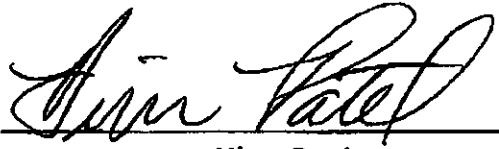
1 DATED: February 14, 2001.

2 THE WILLIAMS COMPANIES, INC.

3  
4  
5 By: \_\_\_\_\_  
6 Alex A. Goldberg  
7 Senior Regulatory Counsel  
8 Attorneys for Defendant Williams Energy

9 DATED: February 14, 2001.

10 OFFICE OF THE ATTORNEY GENERAL  
11 OF THE STATE OF CALIFORNIA

12 By:  \_\_\_\_\_  
13 Hiren Patel  
14 Deputy Attorney General  
15 Attorneys for Intervenor People of the State of  
16 California ex rel. Electricity Oversight Board

17 DATED: February 14, 2001.

18 WILLIAMS & CONNOLLY, LLP

19 By: \_\_\_\_\_  
20 Steve Raber  
21 Attorneys for the ABS Defendants

22 SO ORDERED.

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5 By: \_\_\_\_\_  
6 Alex A. Goldberg  
7 Senior Regulatory Counsel  
8 Attorneys for Defendant Williams Energy

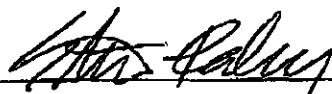
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15 Attorneys for Intervenor People of the State of  
16 California ex rel. Electricity Oversight Board

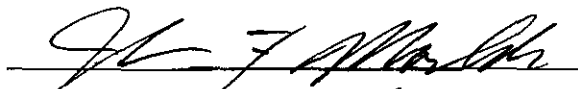
17 DATED: February 14, 2001.

18 WILLIAMS & CONNOLLY, LLP

19 By:  \_\_\_\_\_  
20 Steve Raber  
21 Attorneys for the AES Defendants

22 SO ORDERED.

23 2-15-01

24   
25 U.S. Magistrate Judge  
26

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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF CALIFORNIA  
7 SACRAMENTO DIVISION  
8

9 CALIFORNIA INDEPENDENT SYSTEM  
10 OPERATOR CORPORATION,

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12 v.

13 RELIANT ENERGY SERVICES, INC., et  
14 al.,

15 Defendants.  
16

No. Civ. S-01-0238 FCD (JFM)

**INTERIM PROTECTIVE ORDER  
REGARDING CONFIDENTIAL  
INFORMATION**

---

17 IT IS HEREBY STIPULATED AND AGREED by and among the parties that the  
18 Court may enter the following order:

19 **1. Scope of Order.**

20 (a) Pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure, this  
21 Protective Order Regarding Confidential Information ("Protective Order") governs the handling  
22 of all material produced, disclosed or filed during discovery and other pre-trial proceedings in the  
23 above-entitled action.

24 (b) All documents, materials, items, discovery responses, deposition  
25 transcripts and/or other information produced or disclosed before trial by any party or non-party  
26 to this litigation (the "Producing Party") to or for any party to this litigation (the "Receiving



1 Party”) (collectively, such material shall be referred to as “Information”) shall be governed by  
2 this Protective Order.

3               **2. Confidential Designation.** Any Information produced or disclosed by a  
4 Producing Party as part of pretrial proceedings in this litigation may be designated by such party  
5 as (a) “Confidential” or (b) “Highly Confidential.”

6               (a) The Producing Party shall designate Information as “Confidential” only if  
7 (i) the Producing Party has a reasonable, good faith belief that the Information so designated is a  
8 trade secret or other confidential information within the meaning of Cal. Civ. Code § 3246.1, or  
9 (ii) confidentiality is expressly required by the terms of the California Independent System  
10 Operator Corporation’s tariff as filed with the Federal Energy Regulatory Commission, or (iii)  
11 the Information was received by the Producing Party from some other person or entity and the  
12 Producing Party is contractually obligated to that person or entity to keep that Information  
13 confidential.

14               (b) The Producing Party shall designate Information as “Highly Confidential”  
15 only where the Producing Party has a reasonable, good faith belief that a less restrictive  
16 designation would either (i) work a clearly defined and serious injury to the Producing Party’s  
17 business or operations, or (ii) place the Producing Party in violation of the California  
18 Independent System Operator Corporation’s tariff as filed with the Federal Energy Regulatory  
19 Commission. It is understood that the “Highly Confidential” designation is an exceptional  
20 designation and is to be used in good faith only to protect highly sensitive confidential  
21 Information.

22               (c) Information designated “Confidential” or “Highly Confidential” shall  
23 include, but not be limited to: (i) all copies, extracts, and complete or partial summaries prepared  
24 from such Information that are designated as “Confidential” or “Highly Confidential”; (ii)  
25 portions of deposition transcripts and exhibits thereto that contain, summarize or reflect any  
26 “Confidential” or “Highly Confidential” Information; and (iii) portions of briefs, memoranda, or

1 any other writings filed with the Court and exhibits thereto that contain, summarize or reflect the  
2 "Confidential" or "Highly Confidential" Information.

3           **3. Method of Designation.** Any Producing Party may designate Information  
4 as "Confidential" or "Highly Confidential" by stamping or affixing the legend  
5 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" to the physical objects or documents, in  
6 the manner described below.

7           (a) For documents and discovery responses, designation shall be made by  
8 marking the document on each page containing confidential Information as "CONFIDENTIAL"  
9 or "HIGHLY CONFIDENTIAL."

10           (b) For depositions, designation of the portion of the transcript (including  
11 exhibits) which contains designated Information shall be made by a statement to such effect on  
12 the record during the course of the deposition, or by written notice to the court reporter and all  
13 parties within 15 days after receipt of the transcript. If the designation is made during the course  
14 of a deposition the reporter attending such deposition shall thereafter bind the transcript in  
15 separate portions containing the Information, and the reporter shall place the appropriate legend  
16 on the cover of the confidential portions of the transcript. (The parties may modify this  
17 procedure for any particular deposition through agreement on the record at such deposition,  
18 without further Court order.)

19           (c) For physical things, it is sufficient for the Producing Party to affix a label  
20 indicating that the thing is "Confidential" or "Highly Confidential."

21           (d) All other Information not reduced to documentary, tangible or physical  
22 form, or which cannot be conveniently labeled shall be designated by the Producing Party by  
23 informing the other party (or parties) in writing at or before the time of disclosure or production.

24           (e) All portions of briefs, pleadings or other filings with the Court which  
25 incorporate or disclose confidential Information shall be appropriately labeled on the cover page  
26 and filed under seal. The party filing any such documents shall place the material being filed

1 with the Court in sealed envelopes or other appropriate sealed containers on which shall be  
2 endorsed the title to this action, an indication of the nature of the contents of such sealed  
3 envelope or other container, the term "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" and  
4 a statement substantially in the following form: "This envelope containing documents which are  
5 filed in this case by [name of party] is not to be opened nor the contents thereof displayed or  
6 revealed except by order of the Court." The person filing any such document shall inform the  
7 Clerk in writing that all or a portion designated thereof is subject to this Protective Order and is  
8 to be kept under seal. Upon failure of the filing party to so designate, any party may do so. All  
9 portions of pleadings or other court filings which incorporate or disclose designated Information  
10 shall remain under seal until the Court orders otherwise.

11 (f) In the event a party produces two or more identical or substantially  
12 identical copies of a document and any such copy or substantially identical copy is designated  
13 with a lesser degree of confidentiality than any other copy, all such identical or substantially  
14 identical documents shall be treated in accordance with the most restrictive designation on any  
15 copy or substantially identical copy once the inconsistent designation is known. The Producing  
16 Party shall be responsible for informing the Receiving Party of the inconsistent designation;  
17 however, if the Receiving Party has knowledge of the inconsistent designation, it shall so inform  
18 the Producing Party and treat all copies or substantially identical copies in accordance with the  
19 most restrictive designation. Nothing in this paragraph shall be construed to limit a party's right  
20 under ¶ 5 herein to challenge the designation of Information as "Confidential" or "Highly  
21 Confidential."

22 4. **Access and Use.** In addition to meeting the other conditions and  
23 requirements for obtaining access to confidential Information set forth in this Protective Order,  
24 all persons described in this paragraph 4 (excluding those persons covered in subparagraphs  
25 4(a)(1), (a)(4)-(a)(6) below) shall, before receiving or having access to Information designated  
26

1 "Confidential" or "Highly Confidential," execute a Declaration in the form attached as Exhibit  
2 A, indicating that they have read the Protective Order and will abide by its terms.

3 (a) Any Information designated as "Confidential" shall be used only in the  
4 above-entitled litigation between the parties (including appeals), and not for any other purpose,  
5 and shall not be disclosed to anyone other than:

6 (1) Outside counsel of record for the Receiving Party, and counsel for  
7 the Electricity Oversight Board (and, if the party is not represented by outside counsel in this  
8 action, then inside counsel of record who are not engaged in competitive decisionmaking),  
9 including partners, associates, clerks, paralegals, and stenographic and support personnel  
10 assisting such counsel;

11 (2) Officers, directors, employees, and inside counsel and legal staff of  
12 a party to this action who need to have access to "Confidential" Information to provide assistance  
13 to counsel of record in this litigation.

14 (3) Independent non-party experts or consultants, and their employees,  
15 retained by counsel of record for parties in this action for the sole purpose of providing expert  
16 consultation or testimony in connection with this action.

17 (4) The Court, and court officials involved in this action (including  
18 without limitation, court reporters, persons operating video recording equipment at depositions,  
19 and any special master or magistrate appointed by the Court);

20 (5) Support vendors retained by outside counsel of record for functions  
21 such as copying, document management, and graphics;

22 (6) Any person who was an author or lawful recipient of such  
23 Information;

24 (7) Any witness testifying at a deposition who is an employee or  
25 independent non-party expert for the Producing Party;

26

1 (8) Any other person as to whom the Producing Party agrees in  
2 writing.

3 (b) Any Information designated as "Highly Confidential" shall be used only in  
4 the above-entitled litigation between the parties (including appeals), and not for any other  
5 purpose, and shall not be disclosed to anyone other than the persons qualified under  
6 subparagraphs 4(a)(1) and (3)-(8) above, provided:

7 (1) that Information designated as "Highly Confidential" shall not be  
8 disclosed to anyone engaged in competitive decisionmaking, as defined below;

9 (2) that prior to disclosing any Information designated as "Highly  
10 Confidential" to any person listed in subparagraph 4(a)(3) above, the Receiving Party shall give  
11 the Producing Party ten (10) days' notice, in writing, stating the name (and company name, if  
12 applicable) of said person, as well as a description of the "Highly Confidential" Information that  
13 the Receiving Party intends to provide to said person; and provided further, that the Receiving  
14 Party shall not disclose such "Highly Confidential" Information (or such portion of it as specified  
15 by the Producing Party), if the Producing Party provides a written objection to the Receiving  
16 Party within that ten (10) day period. The Producing Party shall make such an objection only in  
17 good faith.

18 (c) All Information designated as "Confidential" or "Highly Confidential"  
19 under the terms of this Protective Order shall be kept in secure facilities at the offices of persons  
20 qualified to have access thereto. All counsel of record for the parties in this litigation who have  
21 access to such confidential Information acknowledge that they are bound by this Protective Order  
22 and submit to the jurisdiction of this Court for purposes of enforcing this Protective Order.

23 (d) Nothing in this Protective Order shall prevent an employee of a party  
24 (including inside counsel) or outside litigation counsel (whether or not counsel of record) from  
25 attending any deposition, except that only persons entitled to receive "Confidential" or "Highly  
26 Confidential" Information shall be present when such Information is disclosed at a deposition.

1 Counsel for the party seeking to disclose such "Confidential" or "Highly Confidential"  
2 Information at a deposition shall, prior to disclosing such Information, advise counsel for all  
3 other parties so that appropriate safeguards can be taken to ensure that only persons entitled to  
4 receive such information pursuant to the terms of this Protective Order are present when such  
5 Information is disclosed.

6 (e) At any deposition session, when counsel for the testifying party or non-  
7 party deems in good faith that the answer to a question will result in the disclosure of  
8 "Confidential" or "Highly Confidential" Information, counsel shall have the option, in lieu of or  
9 in addition to taking other steps available under the Federal Rules of Civil Procedure, to direct  
10 that the testimony shall be treated as "Confidential" or "Highly Confidential" Information and  
11 subject to the Protective Order. Counsel for the testifying party or non-party whose  
12 "Confidential" or "Highly Confidential" Information is involved may also request that all  
13 persons other than the reporter, the witness, counsel and individuals specified in Paragraphs 4(a)  
14 and (b) above, who may have access to such "Confidential" or "Highly Confidential"  
15 Information, leave the deposition room during the confidential portion of the deposition. The  
16 failure of such other persons to comply with a request of this type shall constitute substantial  
17 justification for counsel to advise the witness that the witness need not answer the question.

18 (f) Nothing herein shall impose any restriction on the use or disclosure by a  
19 party of its own Information. Nor shall this Protective Order be construed to prevent any party or  
20 its counsel or outside experts from making use as they see fit of Information which is lawfully  
21 available to the public or lawfully in the possession of the party, counsel or expert prior to  
22 another party's producing them in the above entitled action, or which properly came into the  
23 possession of the party, counsel or expert independent of any work in the above-entitled action.

24 (g) Any person receiving Information designated as "Confidential" or "Highly  
25 Confidential" shall not disclose such Information to any person who is not entitled under this  
26 Protective Order to receive such Information.

1           (h) The inadvertent production of Information without appropriate designation  
 2 of confidentiality shall not be deemed a waiver of any claim of the confidential nature of any  
 3 such Information. Upon receiving notice from the Producing Party that "Confidential" or  
 4 "Highly Confidential" Information has not been appropriately designated, all such Information  
 5 shall be redesignated and treated appropriately. The party receiving such "Confidential" or  
 6 "Highly Confidential" Information shall make a reasonable good faith effort to ensure that any  
 7 analyses, memoranda, or notes which were internally generated by the Receiving Party based  
 8 upon such Information shall be treated in conformance with any such redesignation. Nothing in  
 9 this paragraph shall be construed to limit a party's right under ¶ 5 herein to challenge the  
 10 designation of Information as "Confidential" or "Highly Confidential." Any claim of inadvertent  
 11 production of privileged material shall be treated in the manner prescribed by applicable law.

12           (i) "Competitive decisionmaking," as used in this Protective Order means having  
 13 a participatory role within the Receiving Party in the competitive business or marketing decisions  
 14 of the Receiving Party, including without limitation, the purchase and sale of electricity or  
 15 determining the price at which such transactions will occur.

16           **5. Challenges.** If, at any time during the pendency of this litigation, a  
 17 Receiving Party claims that a Producing Party is unreasonably claiming certain Information to be  
 18 "Confidential" or "Highly Confidential," the parties shall attempt to resolve the dispute in good  
 19 faith on an expedited and informal basis. If they are unable to do so informally, the Receiving  
 20 Party may make an appropriate application to this Court, with the confidential-designated  
 21 portions kept under seal, requesting that certain Information be treated as non-confidential under  
 22 the provision of this Protective Order or that Information designated as "Highly Confidential" be  
 23 treated as "Confidential." The Producing Party shall have the burden of proof that its proposed  
 24 designation is justified. Pending the resolution of the informal dispute or court proceeding, the  
 25 party contesting the designation shall continue to treat the Information in accordance with its  
 26 current designation. If any party seeks to change or challenge the designation of any Information



disclosed or produced in the Arbitration, the party shall do so in accordance with the procedures set forth in this Protective Order.

**6. Conclusion of Action.**

(a) Within ninety (90) days after the conclusion of this litigation (including appeals), unless otherwise agreed by the parties, all confidential materials and/or Information shall be returned to the party or non-party who produced such materials, or to their respective counsel, and counsel for all parties shall confirm in writing that all such materials in their possession or control have been returned. Notwithstanding the foregoing provision, outside counsel of record for a party in this litigation shall be entitled to retain all memoranda prepared by them which contain designated Information and litigation papers containing designated Information which become part of the record of this litigation, including pleadings, briefs, deposition transcripts, and exhibits, but such memoranda and litigation papers shall not be disclosed to anyone following termination of this litigation without the written permission of the Producing Party or an order of this Court.

(b) All obligations and duties arising under this Protective Order shall survive the termination of this action and, in addition, shall be binding upon the parties to this action, their successors and assigns (whether in whole or in part), affiliates, subsidiaries, their officers, agents, representatives and employees.

(c) This Court shall retain jurisdiction indefinitely with respect to any dispute regarding the improper use of designated Information, to modify the terms of this Protective Order, or to enter further Orders respecting confidentiality, as may be necessary.

(d) The attorneys of record in this litigation shall retain the original executed Declarations in the form attached hereto as Exhibit A.

**7. Scope of Protective Order.**



1           (a)     Nothing in this Protective Order shall preclude any party from objecting to  
2     the production of Information it considers to be not subject to discovery. In particular, the fact  
3     that this Protective Order establishes confidentiality protections for trade secrets and other  
4     proprietary information does not imply that any party waives any right it otherwise has to object  
5     to producing such information at all.

6           (b)     Nothing in this Protective Order shall preclude any party from applying to  
7     the Court for an order compelling production of Information.

8           (c)     Nothing in this Protective Order shall be construed to relieve any party  
9     from its obligation to timely respond to discovery as provided by any order of this Court or the  
10    Rules of Civil Procedure, where applicable, unless (prior to the date for such response) the party  
11    obtains from the Court an order relieving such party from its discovery obligation.

12          (d)     This Protective Order shall not diminish any existing obligation or right  
13    with respect to "Confidential" or "Highly Confidential" Information, nor shall it prevent  
14    disclosure to which the Producing Party consents in writing before the disclosure takes place.

15          (e)     Evidence of the existence or non-existence of a designation under this  
16    order shall not be admissible for any purpose during any proceeding on the merits of this action.

17          (f)     Nothing in this Protective Order is intended to constitute an agreement  
18    regarding the scope of discovery or a limitation on the scope of discovery.

19          (g)     This Protective Order, insofar as it restricts the communication and use of  
20    Information, shall not apply to the introduction of evidence at trial. However, any party may  
21    seek appropriate court orders, including without limitation, an order that restricts the use of any  
22    Information during the trial, requests that portions of the transcript be sealed, or restricts access  
23    of the public to certain portions of the trial.

24    **IT IS SO ORDERED.**

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1 DATED: February \_\_\_\_, 2001.

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Hon. Frank C. Damrell, Jr.  
United States District Judge

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Exhibit A

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

CALIFORNIA INDEPENDENT SYSTEM  
OPERATOR CORPORATION,

Plaintiff,

v.

RELIANT ENERGY SERVICES, INC., et  
al.,

Defendants.

No. Civ. S-01-0238 FCD (JFM)

DECLARATION OF UNDERTAKING  
AND COMPLIANCE

I, \_\_\_\_\_, declare:

1. My address is \_\_\_\_\_.

2. My present employer is \_\_\_\_\_.

3. My present occupation and job title are \_\_\_\_\_.

4. I have received a copy of the Protective Order Regarding Confidential Information ("Protective Order") entered in this action. I have carefully read and understand the provisions of it and agree that I will comply with all provisions of it.

1                   5.     I submit to the jurisdiction of the United States District Court for the  
2 Eastern District of California for purposes of enforcement of the Protective Order, and fully  
3 understand that violation of the Protective Order is punishable by contempt of Court.

4                   6.     I will hold in confidence, and will not disclose to anyone not qualified  
5 under the Protective Order, any Information disclosed to me that is designated "Confidential" or  
6 "Highly Confidential" or any words, summaries or abstracts thereof.

7                   I declare under penalty of perjury under the laws of the United States of America  
8 and the State of California that the foregoing is true and correct.

9                   Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at  
10 \_\_\_\_\_.

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(Print name)

(Signature)

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United States District Court  
for the  
Eastern District of California  
February 20, 2001

\* \* CERTIFICATE OF SERVICE \* \*

2:01-cv-00238

CA Independent

v.

Reliant Energy Svc

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on February 20, 2001, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Norma G Formanek  
NOT EDCA ADMITTED  
Farella Braun and Martel  
235 Montgomery Street  
Suite 3000  
San Francisco, CA 94104

MP/FCD

CF/JFM

Terry James Houlihan  
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Sidney Mannheim Jubien  
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Jack L. Wagner, Clerk

  
by: Deputy Clerk